

STATE OF MICHIGAN  
COURT OF APPEALS

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SHIRLEY T. NIXON,

Plaintiff/Counter-Defendant-  
Appellee,

v

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED

October 1, 2009

No. 285343

Wayne Circuit Court

LC No. 06-628508-NO

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant Farm Bureau General Insurance Company of Michigan appeals by leave granted an order denying its motion for partial summary disposition of plaintiff's claims pursuant to MCR 2.116(C)(8) (failure to state a claim). This Court granted leave to appeal, "limited to the issue whether the trial court erred by denying summary disposition of plaintiff's tort claim for 'bad-faith' denial of insurance benefits." *Nixon v Farm Bureau Gen Ins Co of Michigan*, unpublished order of the Court of Appeals, entered May 23, 2008 (Docket No. 285343). We reverse the trial court's order with respect to plaintiff's tort claim for bad-faith denial of insurance benefits. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This action arises from defendant's denial of plaintiff's claim under a homeowners' insurance policy after a fire damaged plaintiff's house. Defendant denied the claim on the grounds that "the fire was intentionally set by Plaintiff or persons in privity with Plaintiff" and that "Plaintiff made misrepresentation[s] and conceal[ed] . . . material facts." Plaintiff's complaint alleged that defendant had no basis to deny her claim, and that its denial constituted a breach of contract, was done in bad faith, and was intentional, tortious, and amounted to bad faith adjustment of her claim.

Defendant moved for partial summary disposition under MCR 2.116(C)(8), arguing that Michigan law does not recognize "bad faith" in the context of an insurance company's denial of an insurance claim, that plaintiff was not entitled to consequential damages or attorney fees, and that plaintiff's tort claims should be dismissed. Defendant also argued that plaintiff sought to hold it liable for intentional infliction of emotional distress, but that the allegations in her

complaint were insufficient to support that claim. The trial court denied defendant's motion. The court found that plaintiff had pleaded "more than simply failure to pay, simply more than mere bad faith," but rather alleged "tortious acts . . . that according to the case law can be construed as being outrageous in character, extreme in degree that they are leveling against the policyholder." The court found that plaintiff at least pleaded a claim for intentional infliction of emotional distress.

This Court reviews the denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the pleadings standing alone. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The motion must be granted if no factual development could justify the claim for relief. *Id.*; *Spiek, supra*. "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden, supra* at 119.

Michigan courts have held that breach of an insurance contract can support an independent tort claim only if the plaintiff alleges wrongdoing beyond the mere failure to pay insurance benefits. In *Taylor v Blue Cross & Blue Shield*, 205 Mich App 644; 517 NW2d 864 (1994), the defendant denied benefits because it contended that coverage for the treatment sought by the plaintiff, who had Stage IV metastatic breast cancer, was excluded from the policy because the treatment was experimental. This Court affirmed a judgment in favor of the plaintiff, finding that the treatment was not experimental, and thus was not excluded from the policy, but also affirmed the dismissal of the plaintiff's tort claims. *Id.* at 646. As this Court explained, "[f]ailure to pay a contractual obligation does not amount to outrageous conduct, even if it is willful or in bad faith." *Id.* at 657. See also *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273 (2004), in which this Court stated:

The failure to pay a contractual obligation or insurance benefits does not amount to outrageous conduct, even if it is done in bad faith or willfully. In a contractual setting, a tort claim must be based instead on the breach of a duty distinct from the contract.

Other cases have likewise rejected a plaintiff's invitation to recognize the tort of bad-faith refusal to pay an insurance claim. See, e.g., *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 604-608; 374 NW2d 905 (1985), *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 423; 295 NW2d 50 (1980), and *Runions v Auto-Owners Ins Co*, 197 Mich App 105, 110; 495 NW2d 166 (1992).

Thus, the trial court erred in denying defendant's partial motion for summary disposition with respect to plaintiff's tort claim for bad-faith denial of insurance benefits. Even if defendant's denial of benefits were in bad faith, Michigan does not recognize such conduct as tortious. We therefore reverse the portion of the trial court's order denying defendant's motion for summary disposition with respect to this tort claim.

With regard to defendant's argument that the trial court also erred in denying summary disposition of its claim for intentional infliction of emotional distress, we must note that this issue is beyond the scope of this appeal. This Court's order granting leave to appeal was expressly "limited to the issue whether the trial court erred by denying summary disposition of plaintiff's tort claim for 'bad-faith' denial of insurance benefits." Therefore, we decline to

consider the intentional infliction of emotional distress claim and express no opinion on that claim.

We reverse in part and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Defendant may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello